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PASS USTR FOR CUTLER, AUGEROT AND KI
STATE FOR EAP/K AND EB/TPP/BTA
COMMERCE FOR 4431/ITA/MAC/EAP/DUTTON
USDA FOR APHIS/ALFALLA
USDA ALSO FOR FAS/ITP/CLAUS AND GRUNENFELDER

E.O. 12958: N/A

TAGS: [ETRD](#) [ECON](#) [KS](#)

SUBJECT: MARCH 2006 QUARTERLY TRADE MEETING: AGENDA-SETTING

SUMMARY

¶1. (SBU) The first Quarterly Trade Meeting (QTM) for 2006 was held in Seoul on March 3. While there were no breakthroughs, the meeting was constructive and identified no new problems. The Korean government indicated a willingness to address USG concerns, including a potentially serious problem related to government regulation of secure software sales. The U.S. delegation flagged the unhelpfulness of Korean courts' unwillingness to provide injunctive relief, especially in cases related to patents and IPR. Our long-standing broadcasting and pharmaceuticals pricing and reimbursement concerns were discussed in some detail, but will henceforth be handled in the FTA negotiations. We received repeated calls for concessions on issues holding symbolic value for the Korean government, especially unshu oranges and ginseng chicken soup. The Korean government committed to continue the QTM process throughout this year's FTA negotiations, but sought to temper USG expectations concerning the amount of attention the QTM would receive given the heavy FTA workload. End Summary.

¶2. (U) The U.S. delegation was led by USTR Senior Director for Korea Scott Ki, who was accompanied by Jeffrey Dutton from Commerce, Cheryl Claus from USDA and Steven Chan from State. Roughly twenty Embassy staff participated in various segments of the four-hour QTM discussion. The Korean delegation was led by MOFAT North American Trade Division Director Lee Seong-ho, who was supported by colleagues from MOFAT, Ministry of Finance and Economy (MOFE), Ministry of Agriculture and Forestry (MAF), Ministry of Information and Communication (MIC), Ministry of Health and Welfare (MHW), Korean Intellectual Property Office (KIPO), Korea Food and Drug Administration (KFDA), Korean Broadcasting Commission (KBC) and other ROKG offices. MOFAT and USTR have temporarily shifted their leads for the QTM from the Director-General level to the Director level for the duration of the U.S.-Korea FTA negotiations.

¶3. (SBU) The QTM agenda comprised:

-- Agriculture: Follow-up on access for beef including non-beef ruminant products; concerns related to implementation of the WTO rice agreement; threshold levels for adventitious

presence of genetically modified organisms (GMOs) in processed organic foods;

-- Regulatory Issues: Regulation of sales of secure software; Korea Post insurance regulation; dubbing and advertising restrictions in satellite retransmissions; cooperation with Regulatory Reform Committee;

-- Pharmaceuticals and Medical Devices: Update on MHW review of A7 pricing decisions and progress toward identifying core criteria for pricing decisions; follow-up on MHW plans to work with industry to develop independent appeals system and improved written justification for pricing decisions; Lyrica reimbursement guidelines; follow-up on the industry paper on reimbursement rates of medical devices submitted to the ROKG in previous QTM; clarification on reimbursement guidelines;

-- Intellectual Property Rights: Patent infringement cases and lack of injunctive relief; KIPO decisions being overturned by Patent Court;

-- Korean Issues: Unshu oranges; ginseng chicken soup; visas for Korean nurses working in U.S. hospitals; and diamond saw blade U.S. anti-dumping investigation.

CONTINUING THE QTM PROCESS: DIFFICULT, BUT NECESSARY

14. (SBU) The formal discussions were preceded by a courtesy call on MOFAT Director-General for Bilateral Trade Lee Geun-tae. DG Lee expressed satisfaction with the handling of events leading up to the announcement of FTA talks on February 2. Lee confirmed that MOFAT is happy to maintain the QTM process, despite the human resource cost, as it provides a useful, parallel process to resolve trade concerns that might not fit into the context of upcoming FTA negotiations. Lee cited the example of the stalled Korea-Japan FTA negotiations; Japan and Korea suspended their periodic bilateral trade discussions with the advent of those negotiations, and now both sides are struggling to resume non-FTA trade discussions. Acknowledging the strain that would be placed upon both ROKG and USG resources in maintaining the QTM and FTA processes simultaneously, Ki explained that the USG will remain flexible on the venue and manner of future QTM discussions, perhaps arranging them around the margins of future FTA rounds.

AGRICULTURE -----

16. (SBU) To open discussion at the QTM meeting itself, each side acknowledged both the importance of the upcoming FTA negotiations, and the progress made on key trade issues leading up to the FTA announcement -- including beef, screen quotas, and automobiles. Director Lee thanked the U.S. for resolving the longstanding issue of access for Korean paprika (peppers) to the U.S. market.

17. (SBU) Beef: Ki thanked Korea for the progress made so far on the resumption of beef exports to Korea. He also noted the importance of cooperating closely to arrange for the auditing of U.S. meat processing plants by Korean experts, and urged Korea to begin the audits as soon as possible. In addition, Ki noted that Charles Lambert, Acting Under Secretary for Marketing and Regulatory Programs at USDA, was

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expected to come to Korea on March 6 to clarify the audit process. Director Lee acknowledged that there had been some delay in arranging the audits due to "administrative" issues. He indicated that Korea wished to take a step-by-step approach since there was still some concern on the part of Korean consumers about the safety of U.S. beef.

18. (SBU) Rice: Ki thanked the Korean side for completing the U.S. portion of the 2005 minimum market access rice tenders and asked for details on the 2006 tenders. Lee Seong-ho responded that the 2006 tenders would be drawn up based upon

the results of the 2005 tenders, for all countries, a task which has not yet been completed. Yoon Dong-Jin, Director of MAF's Bilateral Cooperation Division, asked that the United States be patient, since this will be the first time that foreign rice will be available to the Korean consumer. Ki pressed for a possible timeline for the 2006 tender, and the Korean representatives at the QTM responded by reiterating that the 2005 tender process must be completed before a timeline can be set.

¶9. (SBU) Ki noted USG concerns about the terms of the 2005 tender, in which nearly 95 percent of the U.S.-specific quota called for "U.S. Grade 3 or better" quality rather than "U.S. Grade 1" quality. Ki explained that the United States produces little, if any, Grade 3 quality rice. U.S. exporters had no choice but to submit bids for Grade 1 rice, which raised the risk that the bids might be rejected by Korea due to the higher price. Ki also asked for clarification regarding the mechanism Korea uses to determine price ceilings on tendered rice.

¶10. (SBU) MAF's Director Yoon acknowledged the U.S. concerns, but stated that individual country concerns would not be addressed until the Korean consumer response to the imported rice could be gauged. MOFAT Director Lee reassured Ki that MOFAT recognizes that it would not be to Korea's benefit to allow the United States' country-specific quota to revert to global quota. Lee underlined Korea's commitment to the issue, and stated that he did not anticipate any problems in filling the country specific quota for the United States. Ki asked if U.S. rice would have to be labeled as "Grade 3 or better," or if it could be labeled as "Grade 1" quality. After first suggesting that there were no labeling requirements, the Korean delegation clarified that labeling requirements would be based on the terms included in the tender. Yoon stated that it would be difficult to change the labeling requirements specified in the tender invitation for the 2005 quota, but said that the U.S. concerns would be taken into account for 2006 quota.

¶11. (SBU) Adventitious Presence of GMO's: Commenting on U.S. concerns that Korea's current regulations allow no tolerance for adventitious presence of genetically-modified (GM) material in processed organic food products, MOFAT's Director Lee and representatives of KFDA (which handles processed organic food issues) stated that there are currently no plans to change Korea's system "so far." They added that Korea is considering implementation of a process-based organic certification process in the near future. KFDA officials also reiterated that regulations stipulate that processed food can not be labeled as organic if it contains any traces of GM material. KFDA added that if a global standard were to be devised, they would consider revising their labeling criteria.

AGRICULTURE: KOREAN CONCERNS

¶12. (SBU) Unshu Oranges: MOFAT Director Lee asked for an update on the status of Korea's request for access for Korean unshu oranges to Alaska. Lee said while there is "no real commitment to export to Alaska," this issue has become a "symbolic importance" for the Korean FTA stakeholders. The USG APHIS representative confirmed our commitment to complete the risk assessment for unshu oranges to Alaska.

¶13. (SBU) Ginseng Chicken Soup: Director Lee pointed out that it has been 12 years since Korea first raised the issue of Korean ginseng chicken soup, stating that although the World Organization for Animal Health (OIE) guidelines permit the trade of cooked, sterilized poultry meat, the United States is not using the OIE guidelines in this case. (Background Note: Although Korea first raised its interest in exporting ginseng chicken soup to the United States in 1994, it abandoned its efforts due to lengthy regulatory requirements. Korea raised the issue again in 2004). Director Lee pointed out that the United States emphasizes following OIE guidelines for the beef trade, but has not

followed OIE guidelines in the case of Korea's request to export ginseng chicken soup to U.S. markets. Lee added that this issue had been discussed in Korea's National Assembly and that Assembly members believe Korea to be trying its best to address U.S. concerns, but that the U.S. is not reciprocating. Ki replied that the United States recognized the importance of the issue to Korea and that we would indeed "do our best" to resolve the ginseng chicken soup issue.

REGULATORY ISSUES

¶14. (SBU) Information Technology Security Products: Ki outlined grave USG concerns over the fact that Korea's National Intelligence Service (NIS) has drafted overly-protective information technology regulations, which is negatively affecting sales of U.S. I.T. products containing security features. Ki urged NIS officials to attend bilateral briefings in Washington offered by the USG, before finalizing relevant ROKG policies on government procurement of I.T. products containing security features. In response, an NIS representative stated that NIS representatives could not attend the March session as planned, but indicated that a trip in April would be possible. The U.S. delegation raised concerns that, since NIS was planning to issue its "implementation manual" regarding how to properly implement I.T. security product guidelines at the end of March, rescheduling the session to April would be too late. NIS replied that it would be no problem to delay release of its "manual" until after it had attended the information session in Washington.

¶15. (SBU) The NIS representative also said that following Korea's accession to the Common Criteria Recognition Arrangement (CCRA), ROKG policies would be changed to be made in line with CCRA tenets concerning source code review. (Background Note: In addition to the question of following CCRA tenets, also important are the Financial Supervisory Service's regulations requiring that private sector financial firms only purchase IT security products that have been vetted according to the NIS system. There also continue to be concerns related to the breadth of the "government agencies" that should abide by the program. End Background Note.)

¶16. (SBU) Korea Post: Ki prefaced that the U.S. side realizes that the issue of participation by Korea's post office in the banking and insurance sectors remains a delicate one for Korea. But he explained that U.S. insurance, banking and financial services firms continue to complain that Korea Post enjoys unfair practical and regulatory advantages, and uses those advantages to advance in the Korean market at the expense of private providers. Korea Post, a Korean government enterprise, is now the fourth-largest life insurer and eighth-largest banking entity in Korea. Ki asked what progress had been made in implementing the plan to appoint a Task Force to explore Korea Post's privatization, which had been announced in ¶2003.

¶17. (SBU) Deputy Director Kang Sung-tae of Korea Post's Postal Insurance Planning Division defended the postal service's financial businesses as a "not-for-profit" part of the ROKG social welfare system, originally set up to assist Korea's urban poor and far-flung rural populations. Kang indicated that while Korea Post is indeed supervised by the Ministry of Information and Communications (MIC) rather than the Financial Supervisory Service (FSS), this was slowly changing. In December 2005 a new law was passed that allows MIC to request oversight assistance from the FSS. The timeline to explore any privatization of Korea Post, however, has been pushed back until after 2007, and would be "subject to negotiations after that time" between MIC and the FSS.

¶18. (SBU) Korean Head of Delegation Lee Seong-ho summed up the difference between U.S. and Korean perceptions of Korea Post's non-postal businesses: "You think of this side of

Korea Post's work as a financial institution, while we think of it as a part of our welfare system." That said, Lee indicated the Korean side had taken notice of U.S. concerns and would revisit the issue in the future. Ki, in response, underscored that U.S. concern is based on a solid trade-limiting argument. Korea Post competes against the private sector on a non-level playing field. Short of privatization, at a minimum, Korea Post should be subject to the same product and prudential regulations as private sector banking and insurance institutions.

¶19. (SBU) Regulatory Reform Cooperation: Ki applauded Korean officials for their willingness to set up a regular channel for detailed communication with the American Chamber of Commerce in Korea and the U.S. Embassy, as part of the ROKG's ongoing regulatory reform review. In response, Government Policy Coordination Deputy Director Jung Sang-bong said that cooperation should continue. But he also stressed that the ROKG views the cooperation as a contribution to regulatory reform, rather than as a part of the U.S.-Korea trade policy process.

PHARMACEUTICALS AND MEDICAL DEVICES

¶20. (SBU) DOC Dutton asked for an update on any progress Korea has made in carrying out its review of A7 pricing decisions, following the October 2005 QTM. MHW Health Insurance Reimbursement Division Director Park said that his ministry is currently still reviewing the A7 pricing decisions made since 2000, but said the process would take some time since there are many products and a large amount of data to review. As promised by MHW at October 2005 QTM, Director Park said that once the review was complete, MHW would consult with industry concerning A7 pricing criteria.

¶21. (SBU) Dutton also raised the issue of setting up an independent appeals process for pricing and reimbursement decisions. The ROKG had declared its support of developing such a process at the October 2005 QTM. Park replied that there has been no substantive progress since the last QTM in developing an independent appeals system. He said that MHW was still reviewing internally what could be done. Park assured Ki, however, that MHW was currently close to completing a template for a written justification for pricing and reimbursement decisions that the ministry would soon be ready to share with industry for comments. Ki emphasized that MHW should expedite its development of the appeals system and work closely with industry throughout the process.

¶22. (SBU) Dutton also asked about the status of Lyrica, a neuropathic pain medication developed by a U.S. company, specifically inquiring about whether reimbursement guidelines had been set. Park said that Lyrica has been eligible for reimbursement since March 1, and that there is a continuing review of related processes. Park replied that any further details will be handled by the U.S. company and the corresponding organization "on our side."

¶23. (SBU) Departing from the set agenda, Ki raised recent industry concerns about MHW's announcement that it was considering a switch to a "positive list" system for the National Health Insurance's reimbursement list. MHW responded that there had been no concrete decision made on when or how to implement such a positive list system. MHW explained that many of the over 20,000 drugs on the reimbursement list had overlapping functions and efficacies, and needlessly complicated management of the system. Park added that he did not believe a positive list system would disadvantage any specific company. However, since MHW recognizes that such a switch would affect all companies, he assured us that MHW planned to consult closely with industry. Ki and EconMinCouns emphasized strongly that any concrete plan to switch to a "positive list" reimbursement system was certain to intensively worry pharmaceuticals importers.

¶24. (SBU) Medical Devices: Dutton also raised the issue of reimbursement policies for medical devices, asking if the Korean side had looked into the industry paper -- provided at a previous QTM -- that showed that in most instances imported medical devices receive a lower reimbursement rate than domestically-manufactured ones. MHW Trade Cooperation Division Director Bae responded that since this item had not been included on the agenda, MHW had not been able to prepare an answer to this question and could therefore not respond at this time. Dutton asked for updates on MHW's new reimbursement guidelines for medical devices. Bae noted that the guidelines were in fact not new, but were made "official" from the existing guidelines. Bae said MHW will create a task force to study the reimbursement guidelines and plan to convene the first task force meeting in May.

INTELLECTUAL PROPERTY RIGHTS

¶25. (SBU) Ki emphasized to the ROKG delegation that improving IPR enforcement in Korea has been an important issue for a long time. However, while all intellectual property issues are important, only two aspects of IPR protection would be discussed during this session of the quarterlies -- the lack of injunctive relief, and the harm caused to patent holders by the Patent Court overturning KIPO rulings.

¶26. (SBU) The U.S. side expressed concern about an increasing volume of industry complaints that Korean authorities could not (or would not) provide injunctive relief in patent disputes through administrative channels, such as the Korea Intellectual Property Office. Similarly, Korean civil courts appear to never provide injunctive relief, even though that authority exists. Ki expressed concern that U.S. companies were not being protected during patent disputes because the alleged infringers were not being prohibited from continuing the action in question. Absent injunctive relief, he pointed out that even when protection was afforded by a favorable decision at lower levels, that protection was often negated by the fact that the defendant merely had to file an appeal in order to continue the infringing behavior. Ki encouraged the Korean delegation to consider including a fix in the ROKG's "IPR Master Plan," constructing the relevant statutes necessary to authorize Korea's administrative courts -- at least in cases related to patents -- to issue injunctive relief.

¶27. (SBU) In response, a KIPO representative asked for clarification whether our concern was that injunctive relief was not available, or that it was not given. When the U.S. delegation replied that the USG was concerned about both, the Korean delegate described the Korean patent system as being the same as in the United States, and asserted that the Patent Court does have the authority to order injunctive relief. This is contrary to what Embassy research -- and that of Korean law firms representing U.S. interests in patent disputes -- indicates. Both sides undertook to research the matter further and to raise the issue in subsequent meetings.

OTHER ISSUES

¶28. (SBU) Visas for Nurses: MOFAT Director Lee noted that H1-B visa quotas and the exclusion of big cities from the H1-C category create problems for Korean nurses in obtaining visas to work in the U.S. Lee urged changes in the H1-B and H1-C requirements, and said that the ROKG would like to see this issue included in the FTA negotiations. Ki explained that USTR does not have authority in visa issues and that only Congress has the authority to make changes in visa requirements. Embassy staff noted that the Korean Consulate General in Houston has been working with Congressional offices in Texas on the visa issue, and urged them to continue working on this issue through that channel. Director Lee concluded that the visa issue is a "win-win" situation for both sides, whereby the U.S. gets qualified

nurses to meet a growing demand and the Korean public would view such a move in a positive light.

¶29. (SBU) Diamond Saw Blade Anti-Dumping Investigation: Director Lee asked that the USG take note that the Korean government considers our treatment of Korean manufacturers of diamond saw blades to be unfair, compared to China. Lee also noted in passing that USG anti-dumping procedures are onerous for ROK manufacturers, most of which are small or medium-sized enterprises.

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